

Lawrence Portnoy, pursuant to 28 U.S.C. § 1746, hereby declares:

1. I am an attorney admitted to practice before this Court, and I am a partner in the law firm of Davis Polk & Wardwell LLP, counsel for Plaintiff JPMorgan Chase Bank, National Association, London Branch (“JPMorgan”) in the above-captioned matter (the “Action”). I submit this declaration in support of Plaintiff’s Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

2. Attached hereto as **Exhibit A** is a true and correct copy of the confirmation evidencing the Base Issuer Warrant Transaction – 2021 Expiry, dated February 27, 2014.

3. Attached hereto as **Exhibit B** is a true and correct copy of the confirmation evidencing the Additional Base Issuer Warrant Transaction – 2021 Expiry, dated March 28, 2014.
4. Attached hereto as **Exhibits C** is a true and correct copy of the 2002 ISDA Master Agreement.
5. Attached hereto as **Exhibits D** is a true and correct copy of the 2002 ISDA Equity Derivatives Definitions.
6. Attached hereto as **Exhibit E** is a true and correct copy of Defendant Tesla, Inc.’s (“Telsa”) Answer and Counterclaim filed in this Action on January 24, 2022 [Dkt. No. 17].
7. Attached hereto as **Exhibit F** is a true and correct copy of Frederick Rosenberg, *How to Evaluate Option Claims in Customer Disputes*, 27 PIABA B.J. 189 (2020).
8. Attached hereto as **Exhibit G** is a true and correct copy of an excerpt from John C. Hull, *OPTIONS, FUTURES & OTHER DERIVATIVES* (5th ed. 2003).
9. Attached hereto as **Exhibit H** is a true and correct copy of the User’s Guide to the 2002 ISDA Equity Derivatives Definitions (2003 ed.).
10. Attached hereto as **Exhibit I** is a true and correct image of Elon Musk’s (@elonmusk) August 7, 2018 tweet at 12:48 p.m. E.T.
11. Attached hereto as **Exhibit J** is a true and correct image of Elon Musk’s (@elonmusk) August 7, 2018 tweet at 3:36 p.m. E.T.
12. Attached hereto as **Exhibit K** is a true and correct copy of Tesla’s blogpost entitled “Taking Tesla Private,” dated August 7, 2018.
13. Attached hereto as **Exhibit L** is a true and correct copy of email correspondence between Martin Viecha and Owuraka Koney, dated August 7, 2018, filed in connection with

Defendants' Corrected Renewed Administrative Motion to File Under Seal Documents in Support of the Parties' Motion for Partial Summary Judgment Papers in *In Re Tesla Inc. Securities Litigation*, Case No. 3:18-cv-04865-EMC (N.D. Cal. Apr. 23, 2022) (ECF No. 405).

14. Attached hereto as **Exhibit M** is a true and correct copy of Tesla's press release entitled "Statement from the following members of Tesla's Board of Directors: Brad Buss, Robyn Denholm, Ira Ehrenpreis, Antonio Gracias, Linda Johnson Rice, and James Murdoch," dated August 8, 2018.

15. Attached hereto as **Exhibit N** is a true and correct copy of Tesla's blogpost entitled "Staying Public," dated August 24, 2018.

16. Attached hereto as **Exhibit O** is a true and correct copy of a letter from Sudheer Tegulapalle to M. Yun Huh, dated July 29, 2021.

17. Attached hereto as **Exhibit P** is a true and correct copy of a letter from Sudheer Tegulapalle to M. Yun Huh, dated July 30, 2021.

18. Attached hereto as **Exhibit Q** is a true and correct copy of a letter from Sudheer Tegulapalle to M. Yun Huh, dated August 4, 2021.

19. Attached hereto as **Exhibit R** is a true and correct copy of Plaintiff JPMorgan's Complaint, filed in this Action on November 15, 2021 [Docket No. 1].

20. Attached hereto as **Exhibit S** is a true and correct copy of Plaintiff JPMorgan's Answer to Counterclaim, filed in this Action on February 21, 2022 [Docket No. 22].

21. Attached hereto as **Exhibit T** is a true and correct copy of Defendant Tesla's letter-response to Plaintiff JPMorgan's pre-letter motion [Docket No. 26].

22. Attached hereto as **Exhibit U** is a true and correct copy of Defendant Tesla's Schedule 14A, filed on February 8, 2018.

23. Attached hereto as **Exhibit V** is a true and correct copy of Defendant Tesla's Form 8-K, filed on November 5, 2013.

24. Attached hereto as **Exhibit W** is a true and correct copy of Defendant Tesla's press release entitled "Tesla Announces Formation of Special Committee to Evaluate Potential Going Private Transaction," dated August 14, 2018.

25. Attached hereto as **Exhibit X** is a true and correct copy of Ryan Brinkman et al., JPMorgan North America Corporate Research Report, *Tesla Inc: Reverting to Valuing TSLA Shares on Fundamentals Alone Given Funding Appears to Not Have Been Secured; PT Back to \$195*, dated August 20, 2018.

26. Attached hereto as **Exhibit Y** is a true and correct copy of a letter from Sudheer Tugulapalle to Tesla Motors, Inc., dated August 17, 2018.

27. Attached hereto as **Exhibit Z** is a true and correct copy of a letter from Sudheer Tugulapalle to Tesla Motors, Inc., dated August 29, 2018.

28. Attached hereto as **Exhibit AA** is a true and correct copy of a letter from M. Yun Huh to Plaintiff JPMorgan, dated February 13, 2019.

29. Attached hereto as **Exhibit BB** is a true and correct copy of a letter from M. Yun Huh to Sudheer Tugulapalle, dated May 21, 2021.

Dated: New York, New York  
May 23, 2022

DAVIS POLK & WARDWELL LLP

By: /s/ Lawrence Portnoy

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